

METROPOLITAN COUNCIL
ETHICS REVIEW TASK FORCE

REPORT
AND
RECOMMENDATIONS

Nashville, Tennessee

April 29, 2005

Report of the Ethics Review Task Force

The Ethics Review Task Force ("Task Force") is pleased to submit its Report and Recommendations concerning council members' conduct.

The Task Force was created by the Metropolitan Nashville and Davidson County Council pursuant to Resolution No. RS2003-113. The Resolution created a Task Force of eleven citizen members to advise the Council with regard to existing Article II, Chapter 2.04 of the Metropolitan Code. This Article established the Code of Ethical Conduct (Code) for members of the Metropolitan Council.

The Task Force was charged with undertaking:

- a. a comparison of the existing Code of Ethical Conduct to written standards in place in other jurisdictions;
- b. an evaluation of the existing Code of Ethical Conduct; and
- c. recommending suggested changes to the existing Code Ethical Conduct.

Summary of Conclusions

- A code of conduct should give reasonable guidance to members of the Council (Members) as to what is, and more importantly, what is not, conduct deemed unacceptable as a public servant.
- A code of conduct should also provide some guidance to the public at large about acceptable conduct on the part of their elected officials and provide some reasonable level of assurance that Council Members are exercising their legislative discretion without undue influence.
- Council members as well as the public are better served by reasonable and systematic disclosure by members of their personal interests that might impact their discretion.
- Reasonable disclosure of receipt of anything of value on a regular basis will go far toward alleviating suspicions of wrong doing.
- There are certain matters ranging from the criminal (bribery) to receipt of benefits beyond the nominal, which should be deemed unacceptable conduct.
- Council Members and the public desire a mechanism for the resolution of complaints regarding conduct, which is fair, clear and workable.

- The existing Article II, Chapter 2.04 of the Metropolitan Code, including its Code of Ethical Conduct, does not accomplish these purposes and should be replaced.
- Accordingly, the Task Force has proposed a new Ordinance including a Code of Conduct which it strongly recommends to the Council for adoption.

Task Force Meetings and Process

These recommendations are not made by the Task Force in reaction to any known pending crisis or breakdown in the level of acceptable conduct in the Council. Indeed, the Task Force was not made aware of any filed complaints during its nine month existence and few over the last five years. Our city is fortunate in its forty year history of Metro Government in the quality and character of the hundreds of people who have served in its legislative body.

While some might say "if it ain't broke, don't fix it", the Task Force commends the Council for undertaking independent comprehensive review of its conduct standards and enforcement mechanisms precisely at a time when there is little potential "heat" at the Metro level, and when there are no pending complaints involving misconduct.

The Task Force first met on July 12, 2005. John L. Chambers was elected Chair; Earl Campbell, Vice Chair; and Marilyn Swing, Secretary.

Over the next nine months the Task Force met twenty-two times, including public hearings both early and late in the process, and a meeting at which Council members were asked for their comments, needs and observations. Task Force members engaged in individual study of these issues. It developed that the process was more complex than expected. The Task Force requested and was granted two extensions of time to complete its work.

The members and the categories they represented were as follows:

- a. Two (2) former elected officials from Davidson County (Members of the Council or Vice Mayor)
 - ◆ Earl Campbell, former Metropolitan Council member
 - ◆ Mansfield Douglas, former Metropolitan Council member
- b. Representative of the Nashville Bar Association
 - ◆ John L. Chambers, Esq. - Stokes Bartholomew Evans & Petree, P.A.
- c. Representative of the Napier-Looby Bar Association
 - ◆ Allegra C. Montgomery, Esq. – Public Defender's Office
- d. Two (2) individuals trained in the study of contemporary ethics representing the institutes of higher learning in the City

- ◆ Erin O'Hara, Professor, Vanderbilt University Law School
- ◆ James Montmarquet, Ph.D., Professor, Tennessee State University
- e. A corporate ethicist
 - ◆ Kate Payne, R.N., J.D., Director of Ethics, Saint Thomas Hospital
- f. A Certified Public Accountant
 - ◆ Bruce Sullivan, Certified Public Accountant (retired)
- g. Metropolitan Director of Law
 - ◆ Karl Dean, Esq.
- h. Special Counsel to the Metropolitan Council
 - ◆ Donald W. Jones, Esq.
- i. Secretary to the Council Board of Ethical Conduct
 - ◆ Marilyn S. Swing

Ms. Ashley Daugherty, an attorney, was an invaluable resource to the Task Force in the accomplishment of its work.

Review of the Existing Code

Late summer and early fall of 2004 were spent reviewing the existing Code and fact finding regarding the existing systems, both formal and informal. In addition to the public and council member sessions, the Task Force heard from Mr. George Cate Jr., the current chairman of the Metropolitan Council Board of Ethical Conduct (Board), and from Ms. Kathryn A. Stephenson, Esq., an important member of that Board. Mr. Don Jones and Mr. Karl Dean, who are both Task Force members, provided information on how the Code works now, how complaints are made, and actions taken by the Board. The Task Force reviewed all complaints and actions related to the existing code filed over the last several years. Various issues and concerns raised by the Board members were also discussed.

Other documents and resources were also submitted for review and discussion amongst the Task Force. These included the Code of Judicial Conduct from the Rules of the Supreme Court, Mayoral Executive Order on Ethical Conduct, Department of Law Legal Opinion 2004-05, Governor Bredesen's Executive Orders No. 2 and No. 3, Mayor Bill Purcell's Executive Order No. 006, Metropolitan Government Civil Service Rules – Appendix 2, Metropolitan Government Internal Audit Memo, including conflict of interest form, ethics policy for members of the Tennessee General Assembly, State of Tennessee disclosure forms and other state law.

Ms. Payne and Ms. O'Hara also provided commentary about how conflicts of interest, and disclosure of financial interests are handled at Saint Thomas and

Vanderbilt respectively. Ms. Payne supplied an article and brief explanation of the nature and influence of gifts to physicians from industry. These themes were repeated throughout deliberations as each member brought to bear their separate experiences and perspectives.

Comparison to Other Jurisdictions

The task force considered in detail the ethics codes of 13 other cities and referred to several others during their deliberations. Members also drafted “wish lists” of the attributes found in various codes that appealed to them, and that they felt should be considered with regard to possible revisions to the existing Code.

The cities varied in size, geographical location and in the status (part-time or full-time) of the council members. The general codes of the cities vary considerably, from Memphis’ code, which is “aspirational” and nonbinding, to other cities such as Fort Worth, which includes fairly specific provisions. Some of the codes are somewhat general like Nashville’s. However, a significant number do include fairly detailed provisions on what exactly constitutes an impermissible gift or benefit and have reasonably detailed provisions for reporting and reviewing possible violations. The Task Force found that Nashville’s existing Code provision allowing for unlimited benefits to Council members provided they are offered and furnished to all members is unique to Nashville. (After deliberation, the Task Force determined that this exception was not appropriate.) Moreover, unlike Nashville, which has no financial disclosure requirements, most other cities require council members to file financial disclosure statements that become part of the public record. The Task Force drew from the codes of other cities where they seemed useful for purposes of setting forth rules of conduct for the Metropolitan Council.

This extended research led the Task Force to the conclusions that the existing Code of Ethical Conduct was outdated and inadequate for the purposes of guidance to both members and the public, that its stated standards were, in general, too vague to be of practical use, that there were no effective disclosure requirements, and that the enforcement mechanism needed revision in light of experience. These conclusions led to the ultimate conclusion that the Council should simply start over with a total rework of the Code. That conclusion led to an extended process of drafting a definitive proposed Ordinance for consideration by the Council.

Proposed Revisions and Rationale

The focus of the proposed structure is disclosure of a member’s financial interests, of specific conflicts, and of benefits received and accepted. The public is entitled to know within reasonable limits, information which may influence, either consciously or subconsciously, the exercise of a member’s discretion.

The Task Force spent significant time and effort in striking a reasonable tolerance between reasonable disclosure for a public servant who has volunteered for the job and intrusive invasion of the legitimate privacy interests of members and their families. The Task Force believes that it has struck such a balance. The process took time, but the recommended levels of disclosure are unanimously recommended by the group.

Beyond the concept of reasonable disclosure being important, however, the Task Force believes that certain conduct simply should be declared unacceptable. The section of the preferred Ordinance setting forth Standards of Conduct, in conjunction with the definitions of certain terms, set forth in reasonably objective terms was what is not acceptable. The proposed tries to avoid use of terms such as "appearance of impropriety" since they can be remarkably elusive when applied to specific situations.

The proposed revisions seek to provide guidance to the Metropolitan Council and the public about acceptable conduct. These revisions also seek to strike a balance between the fiduciary duties of elected officials and the realities of part time Council Members who work for personal support and interact with the public as part of representative government. The standards of conduct, disclosure and enforcement rules are recommended to help the Metropolitan Council remain impartial and independent in their legislative duties.

Common themes emerged from the comments of some Council Members and the public. These themes were backed up by review of ethical standards from other jurisdictions as well. More specificity and guidance about what is acceptable conduct and what is not was desired. Determining these standards was the most difficult work for the Task Force. There was not agreement on all standards or on dollar amounts. Nevertheless compromise was reached when it was realized that an exhaustive list of standards for all situations is not possible. The standards focus on avoidance of personal or family advantage, financially or otherwise, that might influence a Council Member to act improperly in their legislative duties. The standards also speak to, or more specifically against, Council Members using their position, their office, or information known only to them as Council Members, to their personal advantage.

The proposed disclosure rules seek to encourage public confidence in the integrity of government by increasing the level of transparency about Member activities and interests. At the same time they reinforce appropriate conduct and provide a diary of sorts that the Council and the public can review periodically for reasonableness and adequacy.

The size and composition of the Board of Ethical Conduct, to be called the Board of Conduct, has been increased by two members, with the addition of an accountant and a representative of the Nashville Neighborhood Alliance. Adding these members will provide valuable expertise and will increase the number of Board members available for meetings and hearings.

Several changes have been made to the Board of Conduct's hearing and complaint procedures to spell out the steps to be followed in filing and acting upon a complaint, and to provide greater transparency in the evaluation of complaints. Under the new procedures, the Code sections regarding complaints and hearings would automatically be provided to the complainant when a complaint is filed, so that each citizen would be well apprised of the process and prepared to be a participant. The changes also include removing the factual investigation role from the Department of Law, so that the Department will only evaluate the facts alleged in the complaint itself, in light of the Code's provisions, and provide a report on the same to the Board within two weeks. The Board could then determine the council member's position, and additional facts underlying the complaint, through an open hearing. Towards increasing the Board's actual and apparent impartiality, Board members would now be explicitly forbidden from publicly commenting on ethics complaints until the matter is resolved.

The Task Force revisions do not address matters related to zoning "councilmanic courtesy" or unofficial neighborhood meetings, despite such concerns being frequently mentioned in the public hearings. These were seen as being outside the scope of the Task Force or of Standards of Conduct. Other remedies exist for resolution of political or discretionary differences.

The Task Force has other suggestions which it did not believe were appropriate for inclusion in a binding ordinance. A citizen group, such as this Task Force, can collaborate and reason together to assist both the council members and the public in achieving mutually acceptable levels of transparency and independence.

We recommend to the Council the idea of creating such a Task Force periodically (and especially at times of relative non-controversy) to review how the standards, disclosures and enforcement mechanisms are working in practice.

The Task Force strongly recommends that the Council set up a regular and formal process for the education of new members in the existence and application of these requirements and, at least optionally, as refreshers for incumbent members. This would enhance the guidance purpose of the Rules. These programs could be conducted by the Special Counsel to the Council, by experienced members, or by professional enthusiasts available in the community.

The Task Force was privileged to have been involved and respectfully submits this report and proposed revisions to the Metropolitan Code of Laws.

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By: _____
John L. Chambers, Chair